

## **REMARKS**

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1-25 and 27-28 are pending in the application, with claims 1, 13, 21, and 25 being independent. Applicant cancels claim 26 without prejudice to or disclaimer of the subject matter recited therein. Applicant amends claims 1-6, 8-9, 11, and 21-25 to further clarify features of the claimed subject matter. Support for the claim amendments and additions can be found in the original disclosure. No new matter has been added.

## **CLAIM REJECTIONS 35 U.S.C. §102**

**Claims 1, 4, 6, 8-12, 25, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaars (Pub. No.: US 2003/0056010).** Applicant respectfully traverses the rejection.

Nevertheless, without conceding the propriety of the rejection and only to advance the prosecution of this application, Applicant amends **independent claim 1**, to clarify further features of the subject matter. Support for this amendment is found in the application as originally filed at least at page 11, lines 11-21. These revisions introduce no new matter. Amended claim 1 now recites a method, comprising:

- recording a live broadcast on a client device;
- recording, on the client device, metadata associated with the live broadcast, wherein the metadata includes a scheduled program length;
- receiving updated metadata associated with the live broadcast, wherein the updated metadata indicates an exact program length;
- replacing the previously recorded metadata with the updated metadata; and

if a length of the recorded live broadcast is greater than the exact program length, then deleting from the client device a portion of the recording that exceeds the exact program length;

wherein the recording of the live broadcast continues for longer than the scheduled program length.

Applicant respectfully submits that no such method is disclosed by Kaars.

Kaars is directed to “modifying an original set of metadata” ([0005]). Kaars discusses a unit that may store content with new metadata in memory and thereby replace content previously stored with the metadata ([0023]). However, as agreed during the interview, Kaars fails to disclose at least “if a length of the recorded live broadcast is greater than the exact program length, then deleting from the client device a portion of the recording that exceeds the exact program length,” as recited in Applicant’s amended claim 1. Accordingly, claim 1 is allowable.

**Dependent claims 4, 6, and 8-12** depend directly or indirectly from independent claim 1 and thus are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in claim 1 are not disclosed by Kaars. Support for amendments to these dependent claims is found in the application as originally filed at least at page 11, lines 14-18; page 12, line 17; page 13, line 2; page 16, lines 14-19; and page 18, line 15-page 19, line 1. These revisions introduce no new matter. Applicant also respectfully requests individual consideration of each dependent claim.

Without conceding the propriety of the rejection and only to advance the prosecution of this application, Applicant amends **independent claim 25**, to clarify further features of the subject matter. Support for this amendment is found in the

application as originally filed at least on page 5, lines 23-24; page 6, lines 3-6; page 21, lines 8-9; and claim 26. These revisions introduce no new matter. Amended claim 25 now recites an apparatus comprising:

- a storage device;
- a processor coupled to the storage device, wherein the processor is configured to:
  - record broadcast content and metadata associated with the broadcast content on the storage device;
  - receive updated metadata associated with the broadcast content; and
  - replace the previously recorded metadata with the updated metadata if the updated metadata is more current than previously recorded metadata;
- a two-way communication interface coupled to the processor, wherein the communication interface is configured to receive updated metadata from a plurality of data providers coupled to the apparatus, and wherein the updated metadata is communicated using simple object access protocol (SOAP) messages transported using hypertext transfer protocol (http); and
- a modem coupled to the processor, wherein the modem comprises at least one of a Public Switched Telephone Network (PSTN) modem, a Digital Subscriber Line (DSL) modem, or a cable modem.

Applicant respectfully submits that no such apparatus is disclosed by Kaars.

For example, as agreed during the interview, Kaars fails to disclose at least “a two-way communication interface coupled to the processor, wherein the communication interface is configured to receive updated metadata from a plurality of data providers coupled to the apparatus, and wherein the updated metadata is communicated using simple object access protocol (SOAP) messages transported using hypertext transfer

protocol (http),” as recited in Applicant’s amended claim 25. Accordingly, claim 25 is allowable.

**Dependent claim 26** is canceled and the rejection is now moot.

Thus, Applicant respectfully submits that because each and every feature of claims 1, 4, 6, 8-12, and 25 is not disclosed, the claims are not anticipated by Kaars. Applicant respectfully requests withdrawal of the §102 rejections.

**Claims 13 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker et al. (US 2002/0143976).** Applicant respectfully traverses the rejection.

Claim 13 recites a method comprising:

- receiving metadata associated with program content;
- providing the received metadata to a plurality of client devices;
- receiving updated metadata associated with the program content;
- determining whether the updated metadata is more current than the previously received metadata;* and
- if the updated metadata is more current than the previously received metadata:
  - replacing the previously received metadata with the updated metadata; and
  - providing the updated metadata to the plurality of client devices.

Applicant respectfully submits that no such method is disclosed by Barker.

Barker is directed to a system and method that can “allow an asset provider to manage metadata associated with an asset and to distribute the metadata to one or more distribution endpoints” ([0008]). Barker discusses a method in which “the asset provider can identify the distribution endpoints to receive the updated metadata by sending a

notification message to each distribution endpoint.... In response to receiving the notification message, a distribution endpoint can send a request for the updated metadata to the asset provider” ([0010]). However, as agreed during the interview, Barker fails to disclose at least “determining whether the updated metadata is more current than the previously received metadata” as recited in Applicant’s claim 13. Accordingly, claim 13 is allowable over Barker.

**Dependent claims 16-19** depend from independent claim 13 and thus are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in claims 13 are not disclosed by Barker.

Thus, Applicant respectfully submits that because each and every feature of claims 13 and 16-19 is not disclosed, the claims are not anticipated by Barker. Applicant respectfully requests withdrawal of the §102 rejections.

### **CLAIM REJECTIONS 35 U.S.C. § 103**

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaars.** Applicant respectfully traverses the rejection.

Dependent claim 5 depends from independent claim 1 and thus is allowable as depending from an allowable base claim. Nevertheless, without conceding the propriety of the rejection and in the interest of expediting allowance of the application, Applicant amends **dependent claim 5** to clarify further features of the subject matter. Support for this amendment is found in the application as originally filed at least on page 16, lines

11-19. These revisions introduce no new matter. Amended claim 5 now recites a method as recited in claim 1 further comprising:

receiving a request to display information regarding the live broadcast;  
*displaying at least a portion* of the information contained in the updated metadata;  
*receiving a request to display all* of the information contained in the updated metadata; and  
*displaying, all* of the information contained in the updated metadata.

Applicant respectfully submits that no such method is taught or suggested by Kaars.

Kaars discusses records in a database that “may comprise a short description of the associated piece of content, biographies of the cast, duration of the piece of content, time reference along the piece of content, references to other pieces of content, key scenes and so on” ([0018]). However, Kaars fails to teach or suggest “displaying at least a portion of the information contained in the updated metadata; [and] receiving a request to display all of the information contained in the updated metadata,” as recited in amended claim 5. The Office asserts that “[i]t is well known in the art to display metadata related to broadcast content at the user’s request” (Office Action, page 6), but provides no indication of any passage in Kaars that could be interpreted to teach or suggest initially displaying a portion of the associated content then receiving a request to display all of the content. The rejection impermissibly introduces hindsight by using Applicant’s disclosure as a template for reading meaning into Kaars. Thus, the rejection is untenable.

Applicant respectfully submits that because the features of claims 1 and 5 are not taught or suggested, Kaars does not render the claimed subject matter obvious and that

the claimed subject matter, therefore, patentably distinguishes over the cited references. For all of these reasons, Applicant respectfully requests withdrawal of the §103 rejection.

**Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker et al. (Pub. No.: US 2002/0143976).** Applicant respectfully traverses the rejection.

**Dependent claim 20** depends from independent claim 13 and thus is allowable as depending from an allowable base claim. Thus, Applicant respectfully submits that because the features of claims 13 and 20 are not taught or suggested, Barker does not render the claimed subject matter obvious and that the claimed subject matter, therefore, patentably distinguishes over the cited references. Applicant respectfully requests withdrawal of the §103 rejection.

**Claims 2, 3, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaars as applied to claims 1 and 25 above, and further in view of Barker et al. (Pub. No.: US 2002/0143976).** Applicant respectfully traverses the rejection.

**Dependent claims 2, 3, and 28** depend from independent claims 1 and 25, respectively, and thus are allowable as depending from allowable base claims. Moreover, Barker fails to remedy the deficiencies of Kaars with respect to amended independent claims 1 and 25. These claims are also allowable for their own recited features that, in combination with those recited in claims 1 and 25 are not taught or suggested by the combination of Kaars and Barker.

Thus, Applicant respectfully submits that the cited references do not render the claimed subject matter obvious and that the claimed subject matter, therefore, is distinguished over the cited references. For all of these reasons, Applicant respectfully requests withdrawal of the §103 rejections of these claims.

**Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaars as applied to claim 25 above, and further in view of Dunstan (Pub. No.: US 2004/0187151).** Applicant respectfully traverses the rejection.

**Dependent claim 27** depends from independent claim 25 and thus is allowable as depending from an allowable base claim. Moreover, Dunstan fails to remedy the deficiencies of Kaars with respect to claims 25 and 27.

The Office cited Dunstan for allegedly teaching “a PVR (Personal Video Recorder) 100 which contains metadata 200, a recorded content list 215, and viewer recording list 225” (Office Action, page 10 citing Fig. 2 of Dunstan). Applicant has searched and found no evidence that Dunstan compensates for the deficiencies identified in Kaars with respect to Applicant’s claim 25 above.

Thus, Applicant respectfully submits that because the features of dependent claim 27 are not taught or suggested, the cited references do not render the claimed subject matter obvious and that the claimed subject matter, therefore, is distinguished over the cited references. Applicant respectfully requests withdrawal of the §103 rejection.



**Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaars as applied to claims 1 and 21 above, and further in view of Lees et al. (US Pat. No.: 7,162,499).** Applicant respectfully requests withdrawal of the §103 rejection.

**Dependent claim 7** depends from independent claim 1 and thus is allowable as depending from an allowable base claim. Moreover, Lees fails to remedy the deficiencies of Kaars with respect to claims 1 and 7.

The Office cited Lees for allegedly teaching: “In the example, both network sites have a version2 (v2) in metadata 132 for members attribute 130. Thus, computer B wins the replication conflict because the latest timestamp is time3 (t3) which is later than time2 (t2) at computer A. Other resolution policies may resolve replication conflicts with only a version number, or with only a timestamp” (Office action, page 11 citing Col. 3, Line 66 -Col. 4, Line 51 of Lees). The Office has presented no evidence that Lees compensates for the deficiencies identified in Kaars with respect to Applicant’s claim 1 above.

**Dependent claim 22** depends from independent claim 21 and thus is allowable as depending from an allowable base claim. The Office has presented no evidence that Lees compensates for the deficiencies identified in Kaars with respect to Applicant’s amended claim 21 below. Additionally, amended claim 22 recites: “resolving the conflict comprises maintaining both the identified metadata and the other metadata and the display of available content displays both the identified metadata and the other metadata.” As agreed during the interview, the recitation of Applicant’s amended claim 22 is allowable over the cited references.

Thus, Applicant respectfully submits that because the features of dependent claims 7 and 22 are not taught or suggested, the cited references either alone or in combination do not render the claimed subject matter obvious. The claimed subject matter, therefore, patentably distinguishes over the cited references. Applicant respectfully requests withdrawal of the §103 rejections.

**Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker et al. as applied to claim 13 above, and further in view of Lees et al., and further in view of Kaars et al.** Applicant respectfully traverses the rejection.

**Dependent claim 14** recites “a method as recited in claim 13 further comprising discarding the updated metadata if the previously received metadata is more current than the updated metadata.” **Dependent claim 15** recites “a method as recited in claim 13 wherein determining whether the updated metadata is more current than the previously received metadata includes comparing a timestamp associated with the updated metadata to a timestamp associated with the previously received metadata.” Applicant respectfully submits that no such methods are taught or suggested by the combination of Barker, Lees, and Kaars.

Applicant agrees with the Office that Barker fails to “teach that the older metadata is discarded” (Office Action, page 11). The Office cited Lees for its alleged teaching of “a version number and a timestamp” (Office Action, page 11). The Office cited Kaars for its alleged teaching that “the updated metadata replaces the older metadata in the device memory in order to provide maximum storage space in the device memory” (Office Action, page 12). However, Kaars actually teaches away from the recitations of

Applicant's claims 14 and 15. Kaars keeps the updated metadata as a replacement for other metadata ([0023]), whereas Applicant's claim 14 recites "discarding the updated metadata." Additionally, Applicant's claim 15 recites "determining whether the updated metadata is more current," whereas Applicant can find no evidence of Kaars teaching or suggesting the act of *determining* which of two sets of metadata is more current. Kaars appears to automatically replace other metadata with updated metadata ([0022], [0023]).

Thus, the deficiencies in Barker as identified with respect to independent claim 13 above are not remedied by Kaars. The Office has not presented any evidence in the Office Action that Lees compensates for these deficiencies in Barker. Accordingly, there is no evidence that Barker, Kaars, and Lees, whether taken alone or in combination (assuming for the sake of argument that they can be combined), do to teach or suggest the features of claims 14 and 15. Accordingly, Applicant submits that the evidence relied upon by the Office does not support the rejections made under §103 and respectfully requests withdrawal of the §103 rejections.

**Claims 21, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaars.** Applicant respectfully traverses the rejection.

Nevertheless, without conceding the propriety of the rejection and only to advance the prosecution of this application, Applicant amends **independent claim 21**, to clarify further features of the subject matter. Support for this amendment is found in the application as originally filed at least on page 15, lines 8-13. These revisions introduce no new matter. Amended claim 21 now recites one or more computer-readable media

having stored thereon a computer program that, when executed by one or more processors, causes the one or more processors to:

- receive a request to display available content;
- identify metadata associated with the available content;
- determine whether other metadata associated with the available content is available;
- if the other metadata associated with the available content conflicts with the identified metadata, then resolve the conflict and generate a display of available content.

Applicant respectfully submits that no such method is taught or suggested by Kaars.

The appropriate standard for rejections relying on statements of facts that are allegedly “well known” in the prior art is discussed in MPEP §2144.03. “As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).... It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21 (MPEP §2144.03).

The Office presents no evidence that Kaars teaches or suggests: “if the other metadata associated with the available content conflicts with the identified metadata, then resolve the conflict and generate a display of available content,” as recited in Applicant’s amended claim 21. The Office asserts that this deficiency in Kaars is remedied by “well-

known methods in the art, as applied to claims 7 and 22 above to resolve such conflicts” (Office Action, page 13). The method of dealing with conflicting metadata alleged by the Office to be well known is **not** capable of such instant and unquestionable demonstration as to defy dispute. Thus, the rejection of claims 7 and 22 is not supported by sufficient evidence. Since the Office does not indicate any documentary evidence that could be interpreted to teach or suggest resolving a conflict between identified metadata and other metadata, Applicant respectfully asserts that the rejection impermissibly introduces hindsight by using Applicant’s disclosure as a template for reading meaning into Kaars.

**Dependent claims 23 and 24** depend from independent claim 21 and thus are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in claim 21 are not taught or suggested by Kaars. Specifically, Applicant’s amended claim 23 recites “one or more computer-readable media as recited in claim 21 wherein if the other metadata associated with the available content comes from a *data provider with a higher accuracy ranking* than the identified metadata, then replacing the identified metadata with the other metadata.” Applicant’s amended claim 24 recites “one or more computer-readable media as recited in claim 21 wherein if the identified metadata associated with the available content comes from a *data provider with a higher accuracy ranking* than the other metadata, then discarding the other metadata.” Support for these amendments is found in the application as originally filed at least on page 15, lines 18-21. These revisions introduce no new matter. As agreed during the interview, the references of record fail to teach or suggest “a data provider with a higher accuracy ranking,” as recited in Applicant’s amended claims 23 and 24.

Thus, Applicant respectfully submits that the cited references do not render the claimed subject matter obvious and that the claimed subject matter, therefore, patentably distinguishes over the cited references. For all of these reasons, Applicant respectfully requests withdrawal of the §103 rejection of these claims.

### **CONCLUSION**

Claims 1-25 and 27-28 are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of the subject application. If any issue remains unresolved that would prevent allowance of this case, the Office is requested to contact the undersigned attorney to resolve the issue.

Respectfully Submitted,

Lee & Hayes, PLLC

Date: June 24, 2008

By: /Benjamin Keim/  
Benjamin A. Keim  
Reg. No. 59,217  
509.324.9256 x258

Christopher W. Lattin  
Reg. No. 56,064  
509.324.9256 x263